



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0888; FRL- 9814-3]

Approval and Promulgation of Implementation Plans

Tennessee: Revisions to Volatile Organic Compound Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on September 3, 1999. Tennessee's September 3, 1999, SIP adds 17 compounds to the list of compounds excluded from the definition of "Volatile Organic Compound" (VOC). EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0888. All documents in the docket are listed on the

www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

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I. Analysis of the State's Submittal

Tennessee's September 3, 1999, SIP submission changes rule 1200-3-9-.01 by adding a total of 17 compounds to the list of compounds excluded from the definition of VOC to be consistent with EPA's definition of VOC at 40 CFR 51.100(s). The SIP submittal is in response to EPA's revision to the definition of VOC, (at 40 CFR 51.100(s)) published in the Federal Register on August 25, 1997 (62 FR 44900) and April 9, 1998 (63 FR 17331) adding the 16 compounds listed below in Table – 1 and the compound methyl acetate, respectively. These compounds were added to the exclusion list for VOC on the basis that they have a negligible effect on tropospheric ozone formation. The compounds were added by EPA through a rulemaking action which provided for public notice and comment. Today's action approves a SIP revision to update the Tennessee SIP to be consistent with federal law.

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxide (NO_x) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOC and NO_x that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent. It has been EPA's policy that compounds of carbon

with a negligible level of reactivity need not be regulated to reduce ozone (42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound’s reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called “negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

TDEC’s September 3, 1999, SIP revision changes rule 1200-3-9-.01 to add a total of 17 compounds to the list of compounds excluded from the definition of VOC in accordance with the federal list of compounds designated as having negligible photochemical reactivity at 40 CFR 51.100(s).

Table 1 - 16 Compounds Added to the List of Negligibly Reactive Compounds

Compound	Chemical Name
HFC-32	Difluoromethane
HFC-161	Ethylfluoride
HFC-236fa	1,1,1,3,3,3-hexafluoropropane
HFC-245ca	1,1,2,2,3-pentafluoropropane
HFC-245ea	1,1,2,3,3-pentafluoropropane
HFC-245eb	1,1,1,2,3-pentafluoropropane
HFC-245fa	1,1,1,3,3-pentafluoropropane
HFC-236ea	1,1,1,2,3,3-hexafluoropropane
HFC-365mfc	1,1,1,3,3-pentafluorobutane
HCFC-31	Chlorofluoromethane
HCFC-123a	1,2-dichloro-1,1,2-trifluoroethane
HCFC-151a	1-chloro-1-fluoroethane
C ₄ F ₉ OCH ₃	1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane
(CF ₃) ₂ CFCF ₂ OCH ₃	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
C ₄ F ₉ OC ₂ H ₅	1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane
(CF ₃)CFCF ₂ OC ₂ H ₅	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane

II. Response to Comments

On February 19, 2013 (78 FR 11583), EPA published a direct final action and parallel proposed action to approve Tennessee's September 3, 1999, SIP submission to change rule 1200-3-9-.01 to add a total of 17 compounds to the list of compounds excluded from the definition of VOC to be consistent with EPA's definition of VOC at 40 CFR 51.100(s). EPA published a parallel proposal action in the event that adverse comments were received such that the direct final rule would need to be withdrawn. Specifically, in the direct final rule, EPA stated that if adverse comments were received by March 21, 2013, the direct final rule would be withdrawn and not take effect. EPA further stated that the corresponding proposed rule would remain in effect and that any adverse comment comments received would be responded to in a final rule provided EPA was able to address such comments.¹ On March 21, 2013, EPA received a comment. EPA interprets this comment as adverse although notably, it is arguably not a significant adverse comment requiring a response. EPA nonetheless withdrew the direct final rule. A summary of the comment received and EPA's response is provided below.

Comment: The Commenter stated "[w]e are against and want disapproved the desired changes."

Response: The Commenter provided a one-sentence statement with no rationale or basis as to why EPA should not approve Tennessee's September 3, 1999, SIP revision, except to state that the Commenter (and all who the Commenter purports to represent) are against it. In response to the comment which EPA interpreted as adverse, EPA withdrew

¹ EPA also noted that an additional public comment period would not be instituted for the action.

the direct final rule. As mentioned in EPA's direct final rulemaking and again in today's final rule, Tennessee's September 3, 1999, SIP revision was in direct response to EPA's changes to the federal definition of VOC, and the purpose of the revision is to ensure that the Tennessee SIP is consistent with federal regulations. The Commenter raises no basis on which EPA could take any action other than a full approval of Tennessee's SIP submittal. Thus, EPA is now taking final action to approve Tennessee's September 3, 1999, SIP revision.

III. Final Action

EPA is approving the aforementioned changes to the State of Tennessee SIP, because they are consistent with EPA's definition of VOC and the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply

in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address

the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2013

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

40 CFR part 52, is amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR – Tennessee

2. In § 52.2220, table 1 in paragraph (c) is amended by revising the entry in Table 1 for “Section 1200-3-9.01” to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

Table 1 - EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
CHAPTER 1200-3-9 CONSTRUCTION AND OPERATING PERMITS				
1200-3-9-.01	Definitions	6/27/2011	[Insert date of publication in <u>Federal Register</u>] [Insert first page of publication]	<p>On [Insert date of publication in <u>Federal Register</u>] EPA revised this section to add 17 compounds to the list of compounds excluded from the definition of VOC that was state effective on 9/3/1999.</p> <p>EPA is approving Tennessee's July 29, 2011, SIP revisions to Chapter 1200-3-9-.01 with the exception of the term “particulate matter emissions” at 1200-03-09-.01(4)(b)47(vi) as part of the definition for “regulated NSR pollutant” regarding the inclusion of condensable emissions in applicability determinations and in establishing emissions limitations.</p> <p>EPA approved Tennessee's May 28, 2009 SIP revisions to Chapter 1200-3-9-.01 with the exception of the “baseline actual emissions” calculation revision found at 1200-3-9-.01 (4)(b)45(i)(III), (4)(b)45(ii)(IV), (5)(b)1(xlvii)(I)(III) and (5)(b)1(xlvii)(II)(IV) of the submittal.</p>
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[FR Doc. 2013-11681 Filed 05/16/2013 at 8:45 am; Publication Date: 05/17/2013]